

3/2/95

OP:B:EO:T:4

JAN 27 1999

Employer Identification Number: [REDACTED]

Dear Applicant:

On [REDACTED] the Internal Revenue Service ruled that you were exempt under section 501(c)(4) of the Internal Revenue Code. Pursuant to your request that we reconsider your earlier application for exemption under section 501(c)(3), we reopened your case file. Based on our examination of the information submitted in support of your initial Form 1023, the additional information submitted with your Form 1024, and the information recently submitted in response to our letter of [REDACTED] we have concluded that you do not qualify for exemption under section 501(c)(3). The basis for our conclusion is set forth below.

You were incorporated on [REDACTED], as a [REDACTED] membership corporation. Your stated purposes include promoting a better understanding of the law and regulations pertaining to firemen and the methods of fire protection and fire prevention, aiding in the enactment of beneficial legislation for volunteer firemen, and cultivating a social relationship among your members. Your charter was amended in [REDACTED] to satisfy the organizational requirements for exemption under section 501(c)(3) of the Code. Your Constitution and by-laws, adopted on [REDACTED], reflect your objectives.

On your application for exemption, you list your activities as follows:

1. An annual [REDACTED] with a parade to foster comradery among fire personnel.
2. Support of [REDACTED], an organization exempt under section 501(c)(4) of the Code, through donations to its [REDACTED] and through the operation of [REDACTED] that provides

the residents a small amount of spending money for personal needs.

3. The complete reconstruction of a room in [REDACTED] for training in emergency response procedures for [REDACTED] fire departments and [REDACTED]
4. Maintenance of a "benevolent fund" to temporarily aid and assist county firefighters in times of need.
5. An annual convention and parade of member units.
6. Monthly contributions toward the publication of [REDACTED] a magazine circulated to fire personnel.
7. Maintenance of a memorial monument honoring deceased firefighters and sponsoring an annual memorial service.

You have indicated that all your funds are raised through a paid fundraiser. Your contract with [REDACTED], provides that it will publish a monthly magazine on your behalf. [REDACTED] assumes all responsibility for the publication. As compensation for its services, it will receive 5% of the gross advertising revenue. You are guaranteed earnings of \$[REDACTED] or 5% of the gross revenue, whichever is greater.

[REDACTED] also operates phone banks on your behalf annually. You approve the content of all messages. This is done on a commission basis and results in an ad book and a show. Tickets to the show are distributed for each contribution.

Section 501(c)(3) of the Internal Revenue Code provides in part for the exemption from Federal income tax of organizations organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in its generally accepted legal sense.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section

501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its articles of organization limit its purposes to one or more exempt purposes; and do not expressly empower the organization to engage in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The presence of a single substantial nonexempt purpose will defeat exemption regardless of the number or importance of the exempt purposes. Better Business Bureau v. United States, 326 U.S. 279 (1945).

Some of your purposes are charitable and educational. Your reconstruction of a room in the [REDACTED] for the County's use in training its personnel in emergency response procedures, for instance, relieves the burden of government to provide such facilities. Your maintenance of a memorial monument and sponsorship of an annual memorial service also furthers charitable purposes.

Many of your other activities, however, do not further charitable purposes. The [REDACTED] is not a charitable organization described in section 501(c)(3) of the Code. Your program of donations toward its endowment furthers private purposes more than insubstantially. Your sponsorship of the annual convention for your members appears to be primarily social in nature as does your annual [REDACTED] to foster comradery among fire personnel.

Because you engage in substantial activities that do not accomplish the exempt purposes specified in section 501(c)(3) of the Code, we conclude that you are not operated exclusively for exempt purposes within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations and Better Business Bureau v. U.S., supra. In

addition, because your charter specifically states that one of your purposes is cultivating social relationships among your members, we conclude that you are not organized exclusively for charitable purposes as required by section 1.501(c)(3)-1(b)(1)(i) of the regulations.

In the event you are able to establish that you are described in section 501(c)(3) of the Code, you would likely be classified as a private foundation since you do not appear to meet the conditions for classification as a public charity under either section 509(a)(1) or 509(a)(2). All of your income is raised by a paid fundraiser and is attributable, primarily, to the sale of advertising, an unrelated trade or business.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code. Your exemption under section 501(c)(4) of the Code remains in effect.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal

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[REDACTED]

income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: [REDACTED], OP:E:EO:T:4, Rm. 6236
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

E:EO:T:4 Room 6236

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4

cc: [REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]
[REDACTED]

[REDACTED]
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